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SUBJECT: JUDICIAL DAZE IN NICARAGUA: ALEMAN'S GET OUT OF
JAIL FREE CARD

Classified By: CDA Richard Sanders, Reasons 1.4 (b) and (d)

11. (C) Summary: On July 8, Liberal Constitutional Party (PLC) National Assembly Deputy and Justice Committee head Jose Pallais proposed legislation that would give Nicaraguan courts a one month deadline to resolve the 9,040 criminal cases that have languished in the Nicaraguan justice system without resolution for over five years. Under the proposed law, any case that is not resolved after the deadline can be dismissed with all relevant criminal records wiped clean. Many justice sector observers, including Vamos con Eduardo (VCE) Deputy and legal expert Augusto Valle, expressed concern that the law, if passed, would result in the release from prison of thousands of accused rapists, murderers, and narcotics-traffickers, as well as former President and convicted felon Arnoldo Aleman. End Summary.

Aleman's "Get Out of Jail Free" Card

12. (C) During a criminal justice forum on July 8, PLC legislator and National Assembly Justice Committee head Jose Pallais proposed a "law to fix a reasonable time period to resolve pending criminal cases," pointing out that there were 9,040 cases that have been stuck in Nicaragua's notoriously slow court system for over five years - a clear violation of the Nicaraguan constitutional right to a speedy trial (Article 34, Paragraphs 2-3 of the Nicaraguan Constitution). Under the proposed law, Nicaraguan courts would have 10 days from the passage of the law to provide final rulings on less serious cases (those with possible sentences of five or less years) and 30 days from the passage of the law to provide final rulings on serious crimes (those with possible sentences that exceed five years). Should the courts fail to meet these deadlines, the accused citizens would then be able to demand complete dismissal of their case, thereby expunging their records of any trace of the crime they were accused of. Many justice sector observers, including VCE legislator and legal expert Augusto Valle, expressed concern that the law, if passed, would result in the release from prison of thousands of accused rapists, murderers, and narcotics-traffickers.

13. (C) Although Pallais characterized his proposal as a simple attempt to rectify the "violation" of the rights of accused criminal suspects to a speedy trial, judicial sector observers such as former Nicaraguan Attorney General Alberto Novoa decried the proposal as an audaciously "obvious

attempt" not only to release convicted felon and ex-President Arnoldo Aleman (whose case is still on appeal) from his current "house arrest" but to also expunge his record and enable him to return to the political stage. Novoa pointed out, though, that the law had not even passed the full Justice Committee (two Ortega loyalists in the committee were absent during the initial proposal) and said that Aleman's criminal record was too convenient of an "ankle-chain" for Ortega to give up. He speculated that the only way Ortega would allow the passage of the proposed law and the inevitable subsequent return of his most powerful potential rival to the Nicaraguan political stage is if Aleman first gives him his dearest wish: constitutional reform allowing Ortega to remain in power indefinitely either as President for life or as Prime Minister under a new parliamentary system.

¶4. (C) Apart from this proposed "pending criminal cases law", Aleman does not have any other apparent legal recourse to overturn his sentence (either in physical jail or out). Although the passage of the new Nicaraguan Penal Code in 2007 reduced Aleman's previous 20 year prison sentence for money laundering to a mere 5 to 7 years, in December of the same year a Nicaraguan appeals court imposed a new, combined 20 year sentence for the crimes of money laundering, fraud, embezzlement, and misuse of public funds. Had the appeals court not recast Aleman's sentence, it is possible that the ex-President could have been released on "time served" as early as December 2007. Novoa said that if the "pending criminal cases law" passes, the courts would likely only have 10 days to resolve Aleman's case as each of the four crimes he is currently charged with would be considered a less serious crime.

Judicial Careers: New Rules, No Real Change

¶5. (C) Novoa also strongly criticized a judicial career law, that was passed by the National Assembly in 2004 and is only now being implemented by new regulations, as nothing more than a measure to legalize and perpetuate the corrupt status quo of the Nicaraguan judicial system. Although the law was intended to modernize, professionalize, and provide the Nicaraguan judicial system with a degree of political independence, the version of the law that finally passed after much acrimonious debate in the National Assembly formally left the reins of power firmly in the grasp of Nicaragua's highly politicized and corrupt Supreme Court. The Spanish Agency for International Cooperation (AECI) supported the development of the law, but expressed frustration that the law was passed without incorporating any suggestions from donor countries and organizations. Nevertheless, AECI expressed satisfaction that at least the law exists to provide a legal basis for making further improvements to the Nicaraguan judicial sector.

¶6. (C) Under the Judicial Career Law, Nicaraguan Supreme Court justices have the power to nominate and elect members of many of the groups intended to act as a "check" against corruption, including the Council of National Administration of Judicial Careers. This Council in turn is able to nominate magistrates for appellate courts, district courts, and local courts. Several donor countries noted inherent weaknesses in the law. There are no specific procedures for entry into a judicial career or for how judicial career candidates should be promoted. Judicial inspectors who are responsible for investigating disciplinary cases have no established procedures and their functions are not defined. These weaknesses allow Supreme Court justices to create their own set of procedures or ignore them entirely. In a separate meeting, VCE Deputy Valle asserted that the judicial career law has only served to provide the Nicaraguan Supreme Court another powerful tool to "punish and reward" individuals for their obeisance to or defiance of the Court's political agenda. Novoa concluded that there are no checks and balances in the Nicaraguan judicial system, as all of the main judicial principals are "like monkeys on the same branch; they only know how to sit there and scratch each

other's behinds."

Comment

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¶7. (C) Comment: Aleman's latest attempt to escape his legal and judicial difficulties and fully return to the political scene seems unlikely to succeed. As Novoa points out, Ortega would only allow Aleman's freedom if Ortega himself attains an unassailable level of political power, such as he would achieve with a successful constitutional reform. We do not think this is likely at this point. However, the fact that this law was proposed by PLC deputy Jose Pallais as head of the National Assembly's Justice Committee does not bode well for the prospect of true judicial reform. Without true judicial reform and the advent of a strong, independent Nicaraguan judiciary, the preservation of Nicaragua's already tenuous democracy will remain an arduous task.

SANDERS